

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*

Defendants.

Civ. No. 02-582 (CKK, KLH, RJJ)

FILED

APR 24 2002

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

NATIONAL RIFLE ASSOCIATION OF
AMERICA, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

Civ. No. 02-581 (CKK, KLH, RJJ)

EMILY ECHOLS, a minor child, by and through
her next friends, TIM AND WINDY ECHOLS, *et
al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

Civ. No. 02-633 (CKK, KLH, RJJ)

(10)

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CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*

Plaintiffs,

v.

Civ. No. 02-751 (CKK, KLH, RJJ)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

NATIONAL ASSOCIATION OF BROADCASTERS.

Plaintiff,

v.

Civ. No. 02-753 (CKK, KLH, RJJ)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, *et al.*,

Plaintiffs,

v.

Civ. No. 02-754 (CKK, KLH, RJJ)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

Civ. No. 02-781 (CKK, KLH, RJI.)

ORDER CONSOLIDATING CASES

(April ____, 2002)

These cases come before the Court upon a suggestion to consolidate the three original cases by Defendants in all the matters and by Plaintiffs in the *McConnell* action. After reviewing the various filings in these matters, the Court has concluded, in its discretion, that the above-captioned cases shall be consolidated for all purposes pending further order of the Court. The Court has also designated the case *McConnell v. FEC* to be the lead case of this litigation.

Rule 42(a) provides, in pertinent part, that "[w]hen actions involving a common question of law or fact are pending before the court . . . it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Fed. R. Civ. P. 42(a). As is apparent from the text of Rule 42(a), the decision to consolidate is discretionary. *See* 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2383 (2d ed. 1995) ("The district court is given broad discretion to decide whether consolidation would be desirable and the decision inevitably is contextual.").

Although it is not the usual practice for this Court to *sua sponte* order consolidation of cases, there is precedent from this District that such a practice is appropriate given the Court's wide latitude concerning case management. *In re Pepco Employment Litigation*, 1990 WL

236073, at *1 (D.D.C. Dec. 20, 1990) ("Although this circuit does not appear yet to have ruled on whether a court may *sua sponte* order consolidation, the court holds that the plain language of Rule 42(a) and the weight of authority give it the power to issue such an order.") (collecting cases); *see also*, 9 Wright and Miller, *supra*, § 2383 ("A motion is not required however, since the court may order consolidation on its own initiative."). Furthermore, as analogous precedent, the United States Court of Appeals for the District of Columbia Circuit has, by its own motion, ordered the consolidation of a number of related cases. *See, e.g., United States v. Pless*, 1998 WL 315516 (D.C.Cir. May 18, 1998); *Resolution Trust Corp. v. Cohen*, 1994 WL 191734 (D.C.Cir. May 10, 1994). Thus, the Court finds it acceptable to *sua sponte* order consolidation of these matters.

The Court finds persuasive reasons to consolidate these cases. All of these actions present constitutional challenges to the recently enacted Bipartisan Campaign Reform Act of 2002. As such, the challenges all involve common issues of law and fact. Moreover, the Act requires this Court to "advance on the docket and to expedite to the greatest possible extent the disposition of the action." Bipartisan Campaign Reform Act of 2002 § 403(a)(4), Pub. L. No. 107-155 (2002). Thus, consolidation makes sense to the extent that unnecessary costs and delays in the administration of these various actions will be avoided, thereby vindicating the political branches' desire to see this litigation advanced as quickly as justice permits.

While consolidation of cases is "permitted as a matter of convenience and economy in administration," *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933) (discussing 28 U.S.C. § 734, the predecessor statute to Fed. R. Civ. P. 42(a)), consolidation "does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another." *Id.*; *see also Cablevision Systems Development Co. v. Motion Picture*

Ass'n of America, Inc., 808 F.2d 133, 135-36 (D.C. Cir. 1987) (recognizing the holding in *Johnson*, but distinguishing on the facts). As such, the Court has the discretion to deconsolidate these cases at any time and also can issue orders that pertain only to one of the consolidated matters. The discretion provided by Rule 42 also permits the Court to allow the parties to raise issues that might be relevant only to one case.¹ Of course, where it is feasible, the Court expects that the parties will avoid overlapping and duplicative arguments. The advantage of consolidation from the Court's perspective is that when Plaintiffs need to raise an issue with the Court, they need only file one document with the Court and that document will be deemed filed in all matters. Thus, to the extent practical, the Court expects the parties to work together to ensure joint filings.

The three earliest filed cases have requested that the Court deem *McConnell v. FEC* the lead case. The motion, however, confuses the concept of a related case with a consolidated case. When cases are related, there is no concept of a "lead" case. The cases proceed independently and are merely heard before the same Court. Thus, to the extent that the *McConnell* case has been filed after the *NRA* matter, there is nothing the Court can do to renumber the cases and have the *McConnell* case proceed as if it were filed first. However, the Court can consolidate matters around a single action. It is the Court's intention, therefore, to consolidate matters around the *McConnell* action, pursuant to the spirit of this request.


¹ Plaintiffs in *NRA v. FEC* and *Echols v. FEC* had argued in an earlier filing that they opposed consolidation. At oral argument on April 23, 2002, setting forth a scheduling motion in this action, counsel for Plaintiffs in these actions indicated that they would not oppose consolidation if they were permitted the opportunity to file their own brief and make their own presentation at oral argument. The Court agreed to this request.


Accordingly, it is, this 24 of April, 2002, hereby

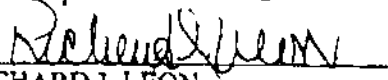
ORDERED that the court *sua sponte* consolidates *NRA v. FEC*, Civil Action No. 02-581, *Echols v. FEC*, Civil Action No. 02-633, *Chamber of Commerce v. FEC*, Civil Action No. 02-751, *NAB v. FEC*, Civil Action No. 02-753, *AFL-CIO v. FEC*, Civil Action No. 02-754, and *Paul v. FEC*, Civil Action No. 02cv781, with *McConnell v. FEC*, Civil Action No. 02-582 for all purposes; it is further

ORDERED that all filings for *NRA v. FEC*, Civil Action No. 02-581, *Echols v. FEC*, Civil Action No. 02-633, *Chamber of Commerce v. FEC*, Civil Action No. 02-751, *NAB v. FEC*, Civil Action No. 02-753, *AFL-CIO v. FEC*, Civil Action No. 02-754, and *Paul v. FEC*, Civil Action No. 02cv781, must be filed in *McConnell v. FEC*, Civil Action No. 02-582.

SO ORDERED.


KAREN LECRAFT HENDERSON
United States Circuit Judge


COLLEEN KOLLAR-KOTELLY
United States District Judge


RICHARD J. LEON
United States District Judge